

# The South Carolina Forest Steward

May 2013



Welcome to the May 2013 edition of the South Carolina Forest Steward. This issue will provide you with information on the the current status of the road issue, an update on tax laws and how to check up on a planting job. A couple of special notes in this article include an introduction of one of our new Extension Forestry hires (we've hired 3 since January!), special recognition of one of our South Carolina landowners and an appeal for Log-A-Load For Kids.

There have been several opportunities to get out in the woods and learn from some of our landowners as well as foresters around the state and region. We hope you have taken advantage of some of these opportunities. We will continue to bring them to your attention. Usually for the cost of a meal, you learn a new technique as well as make great connections with other landowners in your area.

We love to bring content to you that is valuable. If you have any suggestions for content, please send us an email. We want to serve you!

As the days start getting warmer and we see more of the sun, we hope you are enjoying the change in temperature and taking the time to enjoy the glory of our South Carolina forests.


*Tamara Cushing, Extension Forestry Specialist, Clemson University*  
*Bob Franklin, Extension Forester, Colleton County*  
*Co-Editors*

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## New Forestry Extension Agent in the Midlands

My name is Ryan Bean and I am the new Area Forestry Agent in the Midlands. My responsibility in this position will be to provide programs that will help to educate and assist landowners with their forestry and natural resource needs.

I graduated from Clemson in 2004 with a degree in Forest Resource Management. My career in forestry, however didn't start until January 2006 when I accepted a position as a Southern Pine Beetle forester with the South Carolina Forestry Commission in Sumter. I was tasked with administering various cost share programs within Sumter, Lee, Clarendon and Kershaw Counties. This included providing general forest management advice, responding to wildfires, conducting prescribed burns, insect and disease checks, as well as involvement in various educational programs across the state. I stayed with the Commission working in other Forester positions until December.

I am excited to begin my career with Clemson and to be able to work more closely with people to address their needs. I will do my best to stay on top of the most up-to-date Forestry and Natural Resources news so that I may continue to pass that information on. If you should have any questions, please feel free to contact me by either visiting the Kershaw County Extension Office or by calling (803)432-9071. 





The South Carolina Forestry Association is sponsoring **Log A Load For Kids** -- a campaign to raise funds for children's hospitals who help treat ill and injured children. All funds raised locally remain with the children's hospital in your area.

Please complete a Log A Load For Kids pledge card today to commit your support to this most worthwhile project. Help us to help even more children this year. Thank you!



# CELEBRATING 25 YEARS

**Children's  
Miracle Network  
Hospitals**



**Did You Know:** The Log A Load For Kids program originated in South Carolina in 1988 to demonstrate logger commitment to community service and professionalism. The concept was for loggers and wood supplying businesses to donate the value of a load of logs to a Children's Miracle Network affiliated hospital. Funds were used in treating ill and injured children.

**PLEDGE CARD**

## SCFA's Log A Load For Kids

I support the following children's hospital(s) *(Please check)*:

- ☐ Georgia Health Sciences Children's Medical Center - Augusta
- ☐ MUSC Children's Hospital - Charleston
- ☐ Palmetto Health Children's Hospital - Columbia
- ☐ McLeod Regional Medical Center Children's Hospital - Florence
- ☐ Greenville Hospital System Children's Hospital - Greenville
- ☐ Levine Children's Hospital at Carolinas Medical Center - Charlotte, NC
- ☐ Backus Children's Hospital at Mem. Health Univ. Med. Cen. - Savannah, GA

Please accept the attached contribution or send a statement for my contribution to *(Please print)*:

Name \_\_\_\_\_ Company \_\_\_\_\_  
 Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
 Signature \_\_\_\_\_ Log A Load Contact Source \_\_\_\_\_

Pledges to be collected by local LOG A LOAD FOR KIDS representatives or mail card to:

**SC Forestry Association, ATTN: Log A Load For Kids,  
 P O Box 21303, Columbia, SC 29210**

### My Pledge Total

Make check payable to the children's hospital of your choice. *(check one)*:

- ☐ \$500 ☐ \$300 ☐ \$100
- ☐ \$450 ☐ \$250 ☐ \$ Other \_\_\_\_\_
- ☐ \$400 ☐ \$200
- ☐ \$350 ☐ \$150

# The Forest Roads Litigation: A Win For Landowners, But The Long Journey Continues

Jacob T. Cremer, Attorney at Law

Imagine if you needed to ask the federal government's permission to harvest timber. Recently, the U.S. Supreme Court rejected an environmental organization argument to require just that. In March, the Court reversed a Ninth Circuit Court of Appeals decision that required forest and logging roads to be permitted under the Clean Water Act. See *Decker v. Nw. Env'tl. Def. Ctr.*, 568 U.S. (2013) (consolidated cases 11-338 and 11-347). You may recall that the Ninth Circuit is the court that gave us the highly-publicized decisions protecting the spotted owl in the Pacific Northwest and eliminating timber harvesting in many communities. It is also the court that the Supreme Court overturned last year in an important case that for the first time gave landowners the right to take the U.S. Environmental Protection Agency ("EPA") to court when it issues fines and penalties against the landowners. See *Sackett v. EPA*, 132 S. Ct. 1367 (2012).

Forestry professionals and forest landowners were paying attention to this case because it addressed two important questions. First, would all forest and logging roads require a time-consuming and expensive permit? Second, would forest landowners be exposed to the risks of citizen suits by environmental organizations seeking to enforce the Clean Water Act?

These questions made the *Decker* case the most important environmental regulatory decision for forestry professionals and forest landowners in recent memory. For the small landowner in the Southeast, permitting costs alone had been estimated at minimum to be \$3.13 per acre per year -- and as high as \$21.46 per acre per year. See <http://nafoalliance.org/wp-content/uploads/Road-Permit-Costs-in-South1pdf>.

Although the *Decker* decision was a big win for the forestry community, it poses some risks for the future. Ultimately, environmental and regulatory problems are political problems; you should continue paying attention to this issue and discuss it with your elected officials.

## The Forest Roads Litigation

The Supreme Court's decision in *Decker* is just the latest in a long fight over the murky provisions of the federal Clean Water Act. The parties have already been litigating this issue for about seven years. Some

background about the Clean Water Act will help frame this discussion. Under the Clean Water Act, pollutants may not be put into waters of the United States by a "point source" without a National Pollutant Discharge Elimination System ("NPDES") permit. A point source more or less is any discreet conveyance that could discharge pollutants, such as a pipe, ditch, channel, tunnel, or conduit. Nonpoint sources are not regulated. Congress chose to regulate pollution this way because the technology of the 1970's could only feasibly regulate point sources. Over the past 40 years, we have become very good at assessing and treating point source pollution. We have not been as successful dealing with pollution from non-point sources, and so environmental organizations have been attempting to cast ever-wider nets using outdated laws.

In a lawsuit attempting to do just that, in 2006, a nonprofit organization based at Lewis & Clark Law School called the Northwest Environmental Defense Center ("NEDC") sued a group of landowners, the Oregon State Forester, the Oregon Board of Forestry, and various timber companies in federal court. NEDC argued that the system of ditches, culverts, and channels that collected stormwater on two forest roads that the landowners used in the Tillamook State Forest were point sources.

The landowners argued that the roads and their associated natural stormwater systems were exempt from NPDES permitting because they fell under EPA's longstanding Silvicultural Rule. The Silvicultural Rule was developed in 1976. It exempts most silvicultural activities from classification as a "point source", including "nursery operations, site preparation, reforestation and subsequent cultural treatment, thinning, prescribed burning, pest and fire control, harvesting operations, surface drainage, or road construction and maintenance from which there is natural runoff." 40 C.F.R. § 124.85 (1976).

The federal trial court dismissed NEDC's case. It agreed with the landowners that the timber road runoff collected into a system of ditches, culverts, and conduits and were exempt from permitting requirements under the Silvicultural Rule. *Nw. Env'tl. Def. Center v. Brown*, 476 R. Supp. 2d 1188 (D. Or. 2007). On appeal, however, a panel of judges on the Ninth Circuit struck down the Silvicultural Rule in August 2010. The landowners asked the Ninth Circuit to reconsider the issue before a much larger panel of judges. It agreed and issued a new decision in May 2011, but it still held that the Silvicultural Rule was invalid. See *Nw. Env'tl. Defense Ctr. v. Brown*, 640 F.3d 1063 (9th Cir. 2011). It said that when



agencies adopt rules, those rules must be consistent with the statutes they are developed under -- and the Silvicultural Rule was inconsistent with the Clean Water Act.

The state of Oregon appealed the ruling to the U.S. Supreme Court, with the support of 25 other states, as well as a number of forest landowners and forest industry organizations. As the parties submitted their written arguments, most observers thought that the forestry interests had the stronger case. On the eve of oral arguments, however, EPA surprised everyone by issuing -- in record time -- a new rule to replace the rule that the Ninth Circuit struck down. EPA said the new rule left the U.S. Supreme Court with no reason to hear the case. Consequently, instead of talking about the substance of the case, the parties spent all their time arguing about what should happen to the case after the new rule. The Supreme Court Justices, as you might imagine, were not happy that they had not been told about this development, and so they ordered the parties to submit additional written arguments about the new EPA rule.

Meanwhile, out in the Ninth Circuit, NEDC immediately sued EPA seeking to have the new rule declared invalid. Forest industry groups requested to intervene in the case, which the Ninth Circuit allowed. The industry groups were concerned because the new rule only addresses **logging** roads, which are temporary roads. The new rule specifically stated that EPA was still considering what to do with more permanent **forest** roads. Don't expect the Ninth Circuit to determine whether the rule is valid before the end of 2013.

### Implications

This brings us to the U. S. Supreme Court's decision in *Decker*. After the complications of EPA's new rule, most observers thought it was unlikely that the Supreme Court would address the actual Clean Water Act permitting issues. In a pleasant surprise for the forestry community, the Supreme Court did, saying that EPA's rules exempt "discharges of channeled stormwater runoff from logging roads from the NPDES permitting scheme." It reasoned that EPA's





interpretation of its own regulations was reasonable, was longstanding, and complied with the intent of the Clean Water Act.

The Supreme Court could have stopped there, but it went on to congratulate Oregon on a job well done in implementing its forestry best management practices. The Supreme Court seemed to recognize, as commentators and scientists have pointed out, that a nationwide Clean Water Act permitting regime might actually lead to less clean water. In doing so it recognized the importance of allowing landowners and the forestry community to work together voluntarily to address environmental problems, rather than requiring a control-and-command regulatory environment.

The *Decker* decision, however, was not all good news for the forestry community. The Supreme Court said that it was proper for the NEDC to bring its challenge to the Silvicultural Rule, which was over 30 years old. Normally, a rule created by an agency can only be challenged for a short period of time before it becomes law. The Supreme Court ruled that because the challenge was actually whether the landowners had proper permits under the Clean Water Act, they were not actually challenging the rule directly. This will, unfortunately, lead to more litigation by environmental organizations that do not like longstanding rules. Landowners may be open to these lawsuits, even if they follow all of the agencies' rules and recommendations. With this risk, and the new outstanding lawsuit out in the Ninth Circuit, the Clean Water Act remains an issue that the forestry community must stay abreast of.

What can you do? To keep from being surprised, forest landowners and forestry professionals may want to start thinking through their contracts. It was already a good idea to keep track of who is responsible for getting environmental and land use permits, but with legal uncertainty still looming, it may also be a good idea to include in contracts language that determines who should pay for, draft, and submit permit applications that are developed after a contract is signed.

As for a long-term solution, congressional action permanently exempting silviculture in all its forms from the Clean Water Act would be the best solution. Recent election-year politics have not yielded results, but now that the Supreme Court has ruled, this issue may not be as contentious as it once was. Bills have been filed over the last couple of years that would have solved all of this litigation but they were not passed. You can help by calling your U.S. senators, congressmen, and congresswomen and asking them

to reintroduce or support the Silvicultural Regulatory Consistency Act (last year's bills were numbers H.R. 2541 and S. 1369). Remember, as I mentioned, that with all environmental law and regulatory problems, the real solution is political. ☞

*Jacob T. Cremer practices property rights, environmental, and land use law at Smolker, Bartlett, Schlosser, Loeb & Hinds, P.A., based in Tampa, Florida. His passion for these areas of the law comes from growing up in a family that has been involved in forestry in Florida for five generations and in South Carolina for thirty years. Follow the developments on the cases discussed here and others at his blog, The Florida Land Environment, [www.jacobtcremer.com](http://www.jacobtcremer.com).*

## Flowering Dogwood

*Bob Franklin, Area Forestry Agent, Colleton County*

Throughout South Carolina and most of the eastern states, dogwood flowers in our landscapes are beautiful promises of spring. Our native flowering dogwood, *Cornus florida*, is one of the most beloved and widely planted of the country's trees. To this woods-roaming child in Lee County, Alabama years ago, the white clouds of dogwood flowers in the woods were a sign that it was finally time to go barefoot and the bream were starting to bed!



A small, irregularly shaped understory tree, dogwood is commonly found in partial shade, beneath larger trees. The leaves are deciduous, oppositely arranged, up to approximately five inches in length and two inches wide. The margins are either entire or they have abruptly sharp-pointed tips. The flowers are small and yellowish, surrounded by four large, showy white or pink bracts which resemble petals, appearing in the early spring before the leaves. Dogwood fruits are bright red, oval, berry-like drupes, containing a pit with two seeds. These pretty red fruits provide an

important winter food source for birds and squirrels. The bark is dark gray-brown, thick, and broken into small, squarish plates. *Cornus florida* is the larval host for spring azure butterflies.

Dogwoods occur in Europe, as well as North America. The wood is quite hard and strong, yet flexible. In this country, the wood was once used as the shuttles and frame for the looms in cotton mills. In England, the cornel, as the dogwood is called, was valued in ancient and medieval times for weaponry such as bows, arrows and lance shafts. The common name, in fact, is derived from the old English word *dagge*, a dagger or sharp-pointed object.

Native American uses of dogwood include a red dye made from the roots to color quills and basketry. They made poultices from the bark to treat sores and dogwood bark teas were brewed to treat diarrhea and fevers. It was the wood of choice among North American Indians, along with osage-orange for making bows. Dogwood is too small to be of much value for lumber, but its hardness and durability have made it useful for tool handles, spindles and wheel hubs.

Smoke was widely believed by Native Americans to be mystical -- a way to communicate with the spirit world -- and pipe smoking was an important element of their ceremonial lives. The leaves and inner bark of many plants, including sumac, willow, cherry and tobacco were smoked in calumets, as Indian pipes were often called. The inner bark of dogwood was a frequent ingredient in these Native American smoking mixtures.

Among the European settlers and their herbal doctors, dogwood enjoyed a reputation as a "febrifuge", a treatment for fevers that was equaled by very few native plants. Some sources even placed dogwood bark above quinine as an antimalarial. During the War Between the States, the Confederate government

placed ads in newspapers, offering to buy dogwood bark. *Cornus florida* was listed as an "official" medical preparation in the *United States Pharmacopedia* from 1820 to 1894.

Flowering dogwood is the state flower of Virginia and North Carolina and the official state tree of Missouri. The South Carolina State Champion *Cornus Florida* is located in Allendale County and is 76 inches in circumference and stands 36 feet tall! 🌳

## LEED Discrimination Legislation

*South Carolina Forestry Association*

The U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED) rating system has a bias in forest certification standards. LEED only recognizes Forest Stewardship Council (FSC) certified wood by providing a credit point in the LEED rating system while failing to provide a credit point for the highly-respected certification systems of the American Tree Farm System and the Sustainable Forestry Initiative.

The South Carolina Forestry Association endorses the equal recognition of all three certification systems in state building construction projects.

On April 18, Senator Katrina Shealy introduced Senate Bill 635 and Representative Nelson Hardwick introduced House Bill 3984 to prevent state agencies from seeking a credit point for Forest Stewardship Council (FSC) wood products in state building construction.

A Senate Fish, Game & Forestry subcommittee met on May 1 and voted 5-0 in support of S. 635. The legislation had the support of Fish, Game & Forestry Committee Chairman Chip Campsen, Senator Katrina Shealy, the bill's sponsor; Senator Greg Gregory, Senator Kevin Johnson, and Senator Ronnie Cromer. SC Forestry Association President Cam Crawford and State Forester Gene Kodama testified in

## Forest Stewardship Program



The Forest Stewardship Program (FSP) is a FREE technical service program designed to encourage multiple resource management on private non-industrial forestlands. FSP encourages wise use of all forest-related activities including timber management, wildlife habitat management, recreation, aesthetics, grazing, and soil and water conservation. WHO IS ELIGIBLE: Private landowners who own more than 10 acres, with at least 5 acres of the tract in forestland. SERVICES PROVIDED: Free technical assistance from a professional forester and wildlife biologist, a 10 year written management plan, subscription to the South Carolina Forest Stewards newsletter, and recognition as a Stewardship Forest landowner.

CONTACT: The SC Forestry Commission Forest Stewardship Coordinator, Scott Phillips, at (803) 896-8844; James Brunson, PeeDee Region Stewardship Forester at (843) 662-5571; Vaughan Spearman, Coastal Region Stewardship Forester at (843) 538-3708; Jamie Jones, Piedmont Region Stewardship Forester at (803) 276-0205 or your local South Carolina Forestry Commission area office.

support of S. 635.

On May 8, Senator Campsen polled S. 635 out of the Fish, Game & Forestry Committee by a 17-0 vote and placed it on the Senate calendar. On May 9, the Senate voted in support of S. 635 by a vote of 41-0. The legislation will be considered by the House Agriculture Subcommittee on May 21st. 🌿

## What Type of Widgets Are You Trying To Produce?

*John Hatcher, Ph.D. Candidate in Forest Resources, Clemson University*

In the ivory tower of academia, we are taught that a widget is a small manufactured item and one of the most important questions an entrepreneur or firm should ask themselves is, exactly what type of widgets are they trying to produce? Answering this question allows them to have an idea of the financial, natural, and physical capital required to manufacture their product. I think anyone who owns or is interested in acquiring forestland in the near future should ask themselves this same question.

Sitting down with a plat, pad, and pen and asking yourself what, when, and how you want to accomplish your objectives before a broker or consultant is retained will increase the effectiveness of their services. Do you want to produce quality wildlife habitat, quality timber, or do you want to install a pond on your property? With the proper planning all three of these “widgets” can be produced on most of the forestland in the Southeastern United States without completely draining the bank account.

Let’s suppose a landowner wanted to produce all of the above named products (wildlife, timber and a pond) on their land. Sitting down and determining potential pond sites, food plots, and timber stands will not only give the forester or other professional an idea as to how you want things laid out, it may save financial resources in the future. I know from personal experience that working in concert with a forestry professional prior to a timber harvest can be beneficial when trying to incorporate wildlife objectives into your short- and

long-term plans. Placing logging decks where food plots are desired can reduce the establishment costs and require minimal work to complete once the harvest is done. If your property has a lot of desirable mast species (oaks and persimmons for example), identifying areas that need to be thinned may help the productivity of those species in the future.

While producing quality wildlife habitat can be planned for in both the short- and long-term, producing quality timber takes time. Of the three “widgets” mentioned, I would also venture to say that quality timber cannot be produced without the technical expertise of a professional. There is both an art and a science to sound forest management. Forestry professionals possess the knowledge and skill to properly plan management activities that will best suit your needs. If maximizing the return on investment is your number one objective, a forestry professional can prescribe a number of management practices that will fit your budget and time horizon while providing the highest return possible.

If you are thinking about building a pond on your property, proper planning may allow logging crews to clear much of the intended site while they are conducting harvest operations. One aside that is worth mentioning is that building a pond may be subject to special local/state regulations and that the landowner should be aware of such laws before any formal planning is conducted.

Regardless of whether your objectives include the three mentioned in this article, taking some time to plan before a professional is contacted may save time and financial resources in the future. While professionals possess the technical expertise needed to complete formal management plans, having an idea as to what type of “widget” you are trying to produce before this process is initiated may save time and financial resources in the future. 🌿

## Upcoming Events

June 24, 2013	Feral Hog Management. Clemson, SC. For more information, visit <a href="http://www.clemson.edu/fnrce">http://www.clemson.edu/fnrce</a> .
June 26, 2013	Feral Hog Management. Florence, SC. For more information, visit <a href="http://www.clemson.edu/fnrce">http://www.clemson.edu/fnrce</a> .
Sept. 27, 2013	SC Tree Farm Field Day, Chester County. For more information, contact Roy Boyd at <a href="mailto:rboyd@comporium.net">rboyd@comporium.net</a> or (803) 325-1926



## South Carolina Tree Farmer Named 2012 National Outstanding Tree Farmers of the Year

South Carolinians Walt and Barbara McPhail were named the National Outstanding Tree Farmers of the Year at the June 2012 Tree Farmer Convention in Jacksonville, Florida.



The McPhail's 1,400-acre Tree Farm includes woodlands that have been in Walt's family since 1850. Though the family farm once grew cotton, corn, and wheat, Walt and his siblings planted pines to transition the land to a Tree Farm. And the family continues efforts to restore their land -- including projects to establish ponds, wetlands, and wetland flora to attract waterfowl and other wildlife.

"Being involved in the American Tree Farm System is more than just growing trees," said Walt. "It's about making sure you have a voice in Washington about policies that impact family forest owners, it's about educating others about the benefits of working forests for all Americans, and it's about sustainable forestry, keeping our forest healthy and productive."

Walt, a veterinarian by profession, serves as site coordinator for the Clemson University Master Tree Farmer and Master Wildlifer programs, and serves on numerous forestry and landowner committees and advisory boards. Barbara manages the books for the business, and daughters Fran and Jane - who own their own Tree Farms - are both graduates of the Master Tree Farmer program.

"Family forest owners like the McPhail family exemplify how the American Tree Farm System grows stewardship from the roots," said Bettina Ring, Senior Vice President for Family Forests at the American Forest Foundation.

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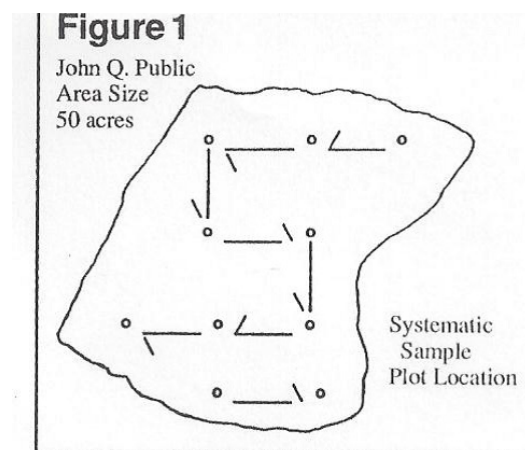
## Evaluation of the Planting Job

Bob Franklin, Area Extension Forestry Agent, Colleton County

Every year, I get the same question from landowners, "How can I tell if I've got good survival from my tree planting job?" The question goes back to the objective of tree planting: a fully-stocked stand. For the money invested in site preparation and planting, a new plantation should be monitored to be sure the objective is met. The monitoring process begins shortly after the seedlings are planted. After planting, sites should be periodically revisited to check for things such as animal damage, frost-heaving, wildfire damage and other unanticipated events.

Of course, if you are participating in one of the tree planting forestry cost-share programs, a representative of the agency that funds the cost-share will check your planting to be sure it meets the criteria for reimbursement of planting expenditures. Whether you are participating in one of these programs or not, it still behooves the landowner to monitor the seedling survival in newly established plantations.


After a full growing season, plantations should be checked to determine the stocking, survival and release needs. A good time to do this is after a killing frost that kills the weedy vegetation and makes the pine seedlings more visible. Systematically spaced 1/100th acre plots (circular plots with a radius of 11 feet, 9.3 inches) (see Figure 1) can be used to determine the number of live trees on the area as a whole and the areas needing replanting or release. Seedlings that are overtopped by competing vegetation are at risk of dying or having normal growth greatly reduced.



At each plot, count the number of surviving seedlings. The average number of surviving seedlings per plot multiplied by 100 equals the number of surviving seedlings per acre.



Another option is to walk every tenth row and count all the seedlings on each row. Multiply the number of seedlings counted by ten and divide that figure by the acres planted and that will give you the total number of surviving seedlings per acre as well.

If you know the initial planting density, the survival percentage can be computed by dividing the number of surviving seedlings per acre by the initial planting density. At the end of this newsletter is an example inspection form. A sample blank survival check inspection form can be found at [www.clemson.edu/extension/natural\\_resources/forestry/forest\\_steward\\_newsletters](http://www.clemson.edu/extension/natural_resources/forestry/forest_steward_newsletters). For additional information on checking seedling survival after planting, contact your local office of the Clemson Extension Service or the South Carolina Forestry Commission. 

## Changes in the Tax Law

*Dr. Tamara Cushing, Assistant Professor & Extension Forestry Specialist, Clemson University*

It's becoming a fairly common occurrence for there to be election-year and year-end changes to the federal tax code. While we were hoping for some big changes that would have a positive effect on forestry, we will settle for no loss of the provisions that we currently enjoy. Here's a quick look at what changed.

### Income Taxes

Most of the changes in the income tax portion of the Internal Revenue Code involve tax rates. For the 2013 tax year (and beyond), we have a new top marginal tax bracket of 39.6% for those with a taxable income exceeding \$400,000 (for individual taxpayers) and \$450,000 (for married filing joint). With this new income tax bracket comes a new capital gains rate bracket. For taxpayers in the 39.6% ordinary income tax bracket, capital gain income will fall into the new 20% bracket.

The Health Care and Education Rehabilitation Act which was signed in 2010, is now beginning to affect our income taxes. Beginning in 2013, there is a Medicare surcharge on income over \$200,000 (for individuals) and \$250,000 (for married filing joint). This tax is on net investment income and will be taxed at 3.8%. This is in addition to capital gains taxes paid. Income derived from forestry is not directly targeted in this provision. However, the intent of this tax is to target income received from passive activities (investments that require little or no participation from the taxpayer). Timber isn't specifically listed but since it qualifies for capital gains and can be passive in nature (depending on whether you are in the trade

or business, hobby or investing as well as your level of involvement), there is a possibility that some forest landowners will pay this additional tax. For more information on this, consult with an accountant.

### Estate Taxes

This past session, Congress made "permanent" the \$5 million exclusion level that was effective in 2011. The estate tax exclusion amount is the amount that passes tax-free. If you are below that amount, there is no estate tax due. The exclusion amount is also indexed for inflation so for someone dying in 2013, \$5.25 million may be transferred without estate taxes. However, I do want to call attention to the word permanent. It is probably obvious that nothing is permanent when it comes to tax law. The next set of legislators can change things. With the \$5 million exclusion in place (indexing for inflation to \$5.25 million in 2013), a new estate tax rate was added. Estates that exceed the exclusion amount will pay 40% on each dollar over the exclusion. Prior to these changes the rate was 35%.

Also affecting estate tax law, there has been the addition of a portability clause. Portability allows a spouse to use any unused part of the deceased spouse's exclusion. Prior to this change, whatever portion of the exclusion that was unused was lost. The addition of portability dramatically changes estate planning for couples. Without portability, couples were advised to structure their estate plans so that the estate of the first to die used as much of the exclusion as possible so as not to lose the ability to pass on as much of the estate without tax.

### Bottom Line

You should consult with your accountant and your estate planner to see how these changes affect your particular situation. There is a ton of fine print on some of this information. In the case of the tax on net investment income, the ink isn't dry yet on the regulations and interpretations of that tax. And as is true of anything tax-related, this information is accurate at the time of writing but can be changed by the legislature.

Those of us who keep up with tax issues for forestry were hoping for some sweeping changes to the Internal Revenue Code. However, in light of recent information, we will be happy with the changes mentioned above and that none of our specific provisions were cut. There has been discussion already this year about cutting provisions from the Internal Revenue Code to increase revenues for the

federal government. The provisions that have been mentioned are the reforestation tax incentive, capital gains treatment for timber and the exclusion of cost share payments from income. Part of the reasoning for these provisions becoming a target has to do with the low level of usage of the provisions by taxpayers. If you have to cut something, as a politician you would want to cut the provisions that would anger the least number of people. Forestry organizations (such as American Forest Foundation, National Woodland Owners Association and Forest Landowners Association) continue to talk to legislators about the benefits of forestry and the tax laws that impact forest landowners. 🌲

## Timber Mart-South

Here is the first quarter, 2013 price summary from Timber Mart-South, published by the Warnell School of Forestry and Natural Resources at the University of Georgia. The prices shown are **statewide** ranges of stumpage (standing timber) and the comparison (Up or Down) from the first quarter 2012. These prices reflect the average range of stumpage prices reported to Timber Mart-South for the quarter. The price you may receive for your timber can and will vary due to factors such as size of timber, amount, location to mills, access and demand. If you'd like more information on the Timber Mart-South price reporting service, call (706) 542-4756 or visit the website at <http://www.timbermart-south.com>.

### Timber Mart-South 1<sup>st</sup> Quarter, 2013 South Carolina

Pine Sawtimber: \$151-\$219 MBF (per thousand board feet Scribner log scale) (\$20.11-\$29.21/Ton).  
On average, no change from 1<sup>st</sup> quarter 2012.

Pine Chip-N-Saw: \$39.92-\$53.26/Cord (\$14.90-\$19.87/Ton). Up from 1<sup>st</sup> quarter 2012.

Pine Pulpwood: \$22.29-\$28.79/Cord (\$8.32-\$10.74/Ton). Up from 1<sup>st</sup> quarter 2012. 🌲

## About The Forest Steward

Due to budget constraints, we are unable to print and mail copies of the newsletter. However, we will continue to produce an electronic version four times per year in February, May, August and November.

If you would like to receive future issues of The Forest Steward via email, please join our Forestry and Natural Resources List Server. You may also request to receive notices of landowner-oriented educational programs from this list server. To join, go to our website at [www.clemson.edu/extension/forestry](http://www.clemson.edu/extension/forestry) and click on the link under the Forest Steward banner. You may also access past issues by clicking on the banner itself.

If you have signed up for the list server and have given us your email address, we will email you future editions of the newsletter.

Questions about this newsletter and submissions should be directed to: Editor, Forest Steward Newsletter, Clemson University Cooperative Extension Service, School of Agricultural, Forest, and Environmental Sciences, 272 Lehotsky Hall, Clemson, SC 29634-0310. Phone: (864) 656-0878, email: [tcushin@clemson.edu](mailto:tcushin@clemson.edu). 🌲



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**Figure 2: Example of Survival Check Inspection Form**

County: Colleton  
 Landowner: John Q. Public  
 Field/Tract: Soybean Field – I  
 Acres: 50  
 Soil Type: Goldsboro

**Check Appropriate Descriptions**

CRP        Private W/O C/S X Openland X  
 EQIP        Industry        Cutover         
 FRP         
 WHIP         
 Other        Machine Planted        Hand Planted X  
 Subsoiling Rec X Subsoiling Done X

**Planting Information**

Species Planted: Improved Coastal Loblolly Pine-Best Family  
 Number of Seedlings Planted Per Acre: 622  
 Average Number of Seedlings Correctly Planted Per Acre: 572  
 Percent Correctly Planted: 92%  
 Herbaceous Weed Control Recommended: Yes  
 Herbaceous Weed Control Done: Yes  
 Chemical Used: Oustar

**Plot Information:**

Plot #	# Seedlings/Plot	# Live Seedlings	# Dead Seedlings
1	6	6	0
2	6	5	1
3	7	7	0
4	8	7	1
5	6	6	0
6	6	6	0
7	6	5	1
8	6	5	2
9	5	4	1
10	5	5	0
Avg./acre	610	560	

**Observations of Live Seedlings**

Healthy, good height growth

**Believed Cause of Mortality**

Improper planting, shallow planted

**Survival Information:**

Average Number of Seedlings Surviving/Acre: 560  
 Survival Percentage: 92%